

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLEE**

76-7539

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

ADRIANA SANCHEZ, et al.,

Plaintiffs-Appellees

v.

EDWARD MAHER, et al.,

Defendants-Appellants

UNITED STATES DEPARTMENT OF HEALTH,
EDUCATION AND WELFARE, et al.,

Defendants-Appellees

On Appeal from the United States District Court
for the District of Connecticut

BRIEF OF THE FEDERAL APPELLEES

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QUESTIONS PRESENTED

1. Whether, for the purpose of interpreting a court-ordered stipulation, the district court correctly admitted evidence showing the intent of the parties to the stipulation.
2. Whether the district court correctly interpreted the court-ordered stipulation as requiring the Connecticut Department of Social Services to hire Spanish-speaking persons to fill vacancies that existed at the time of the stipulation as well as hire additional Spanish-speaking personnel.

3. Whether, after appellants had presented evidence concerning the lack of discussion among the parties regarding vacancies, and after the court had ruled on the intent of the parties concerning vacancies, the court erred in denying appellants' request to present additional evidence on the same point.

STATEMENT

Procedural History

On April 18, 1973, Spanish-speaking recipients of public assistance programs in the State of Connecticut filed a complaint in federal district court alleging that they and the class they represented were denied constitutional and statutory rights by virtue of the failure of the Connecticut Welfare Department^{1/} to provide programs, benefits and services to them on an equal basis with English-speaking persons, the failure of the Welfare Department to recruit and employ Spanish-speaking personnel, and the Department's failure to provide bilingual documents and other communications to Spanish-speaking persons.^{2/}

The United States Department of Health, Education and Welfare (HEW) and officials of that agency were also named

^{1/} In October 1974, the Welfare Department changed its name to the Department of Social Services (App. 45a).

^{2/} App. 18a-19a.

as defendants. Plaintiffs alleged that HEW violated their rights under the Fifth Amendment and Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, by failing to correct alleged discrimination by the Welfare Department, which is a program receiving federal assistance within the meaning of Title VI.^{3/}

In their answer, the federal defendants admitted that the Connecticut Welfare Department had failed to provide social services programs to Spanish-speaking persons on an equal basis with services provided English-speaking persons,^{4/} and that the Welfare Department's failure to provide equal services was due partially to its failure to employ sufficient numbers of Spanish-speaking personnel.^{5/}

HEW subsequently conducted an investigation and concluded that the Welfare Department was not in compliance with Title VI and applicable regulations. After discussions between HEW and the Welfare Department, the two agencies entered into a stipulation which was signed and entered by the district court on June 10, 1974.^{6/}

3/ 42 U.S.C. 2000d provides:

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

4/ Answer of the federal defendants, ¶24.

5 Id. at ¶25.

6/ App. 36a. The copy of the stipulation reproduced in Appellant's Appendix does not reflect the fact that the stipulation was approved and entered by the court. See docket entry of June 10, 1974, App. 9a.

The Welfare Department agreed in the stipulation to hire Spanish-speaking personnel. The interpretation of that court-ordered stipulation is the subject of this appeal.

On July 11, 1974, the district court approved a second stipulation.^{7/} The parties to this stipulation were plaintiffs and HEW. Reciting the fact that under the HEW/Welfare Department stipulation, HEW was required to monitor the Welfare Department's compliance with Title VI, plaintiffs agreed to dismiss their action against the federal defendants.^{8/}

In response to motions by plaintiffs, HEW was reinstated as a defendant on January 5, 1976, for the limited purpose of enforcing the HEW/Welfare Department stipulation.^{9/} On January 19, 1976, HEW filed a motion to enforce that stipulation, contending that the Welfare Department had not hired the number of Spanish-speaking persons required by the court's order.^{10/} On January 21, 1976, plaintiffs also filed a motion to enforce the HEW/Welfare Department stipulation.^{11/}

^{7/} App. 39a-43a.

^{8/} Id.

^{9/} Order of January 5, 1976 (docket entry at 12a-13a).

¹⁰ App. 108a (pp. 108a-124a of the Appendix may be found in the Supplemental Appendix).

^{11/} Docket entry at 13a.

The district court held a hearing on plaintiffs' and HEW's motions on April 19, 1976, and April 27, 1976. On September 2, 1976, the court entered the order from which the Welfare Department has appealed.^{12/} The court found that the stipulation between HEW and the Welfare Department required the Welfare Department to employ a total of 79 bilingual all-purpose workers, and that, at the time of the hearing, the Department had in its employ only 71 such persons. The court ordered the Department to hire eight additional Spanish-speaking persons within 60 days.

The Department of Social Services filed a timely notice of appeal on October 26, 1976.

Facts

The current controversy concerns the number of Spanish-speaking employees required by the stipulation entered by the court on June 10, 1974. The pertinent language of the stipulation is as follows (App. 36a-37a):

(1) The CWD will immediately seek to hire ten (10) additional all-purpose bilingual English-Spanish workers. This will be accomplished by going through the CWD's WIN lists and requesting another Interpreter's examination to increase its Interpreter capability....

(2) The CWD will also proceed to hire ten (10) additional professional workers in the Social Services. This will be done by the CWD immediately requesting the State Personnel Commissioner to request that the Social Worker/Spanish-speaking classification

^{12/} App. 44a.

be put on the next agenda of the Personnel Policy Board. The CWD will also request new classifications for Case Worker I Spanish-Speaking and Case Worker II Spanish-Speaking. . . .

The stipulation also provides that if it is "determined at a later date that additional Spanish-speaking capability is necessary, the CWD will make its best efforts to augment its Spanish-speaking capability to meet the additional needs."^{13/}

HEW agreed in the stipulation to forgo further activity in the suit vis a vis the Welfare Department.^{14/}

The language of the stipulation was derived from a letter written by then-Commissioner Nicholas Norton to John Bynoe, the Regional Director of Civil Rights for HEW.^{15/} In that letter, Commissioner Norton stated:

As a result of my meeting with personnel from your office on March 28, 1974, in which we discussed the above civil action at length, the Connecticut Welfare Department is making a final offer to HEW in order to reach an amicable settlement . . .

^{13/} App. 37a. The first full paragraph on p. 37a of Appellants' Appendix has omitted part of the language of the stipulation. The language quoted herein accurately reflects the language of the stipulation.

^{14/} App. 38a.

^{15/} HEW Ex. 4, App. 78a.

We are willing to immediately seek to hire ten (10) additional all-purpose bilingual English-Spanish workers for our department. This will be accomplished by going through our WIN ^{16/} lists and requesting another Interpreter exam to increase our Interpreter capability. If necessary, we will advertise any new Interpreter exam dates in the newspapers of our three largest cities.

We will also proceed to hire ten (10) additional workers in the Social Services. This will be done by immediately requesting the State Personnel Commission to request that the Social Worker Spanish-Speaking classification be put on the next agenda of the Personnel Policy Board, if this is humanly possible. We are also requesting new classifications for Case Worker I Spanish-Speaking and Case Worker II Spanish-Speaking. These positions will be for Protective Services, Children's Services and Preventive Services.

After these classifications have been established, we will actively seek candidates in the area colleges and schools of social work, in addition to those means usually used by the Personnel Department in filling Merit System positions.

We will also, starting in July 1975, annually review our Spanish-Speaking capability. ^{17/}

As of the entry of the HEW/Welfare Department stipulation, the Welfare Department employed 57 bilingual all-purpose workers and 5 fluent bilingual social workers. ^{18/} As of that date, there were 12 existing vacancies for all-purpose workers. ^{19/}

^{16/} WIN is a federally sponsored work incentive program. See 42 U.S.C. 630.

^{17/} Id. at 78a-79a.

^{18/} Order of September 2, 1976, p. 3 (App. 45a).

^{19/} Id. at 47a.

The issue before the district court was whether the clause of the court-ordered stipulation requiring the Department to hire "10 additional all-purpose bilingual English-Spanish workers" requires the Department to hire 10 persons as well as fill the 12 existing vacancies with Spanish-speaking persons or whether the Department of Social Services is required to hire those 10 persons but is not required to hire bilingual persons to fill vacancies that existed at the time of the stipulation.

Pursuant to the reporting provisions of the HEW/Welfare Department stipulation, the Welfare Department submitted annual reports to HEW in July 1974 and July 1975. A series of meetings and correspondence ensued between HEW officials and the new Commissioner Edward Maher,^{20/} and HEW officials informed the Commissioner that the reports showed that the Department had not complied with the HEW/Welfare Department stipulation.

After HEW was reinstated as a defendant for the purpose of enforcing the stipulation, the district court held a hearing on the motions of plaintiffs and HEW to enforce the stipulation. At that hearing, both HEW and the Department of Social Services submitted evidence to establish the intent of the parties concerning the

^{20/} Edward Maher became the Commissioner of the Welfare Department in February 1975 (Tr. 156). He succeeded Nicholas Norton and was substituted for Norton as a party defendant.

duty of the Department to hire bilingual employees to fill vacancies existing at the time of the court's entry of the HEW/Welfare Department stipulation.

Mr. Francis MacGregor, attorney for the Welfare Department, called himself as the first witness.^{21/} He testified that prior to the entry of the stipulation, the question of filling existing vacancies was not discussed.^{22/}

In addition to the pre-stipulation letter from Commissioner Norton to John Bynoe of HEW,^{23/} HEW introduced a letter of August 15, 1975, from Commissioner Maher to John Bynoe. The Welfare Department made no objection to the admission of either letter.^{24/} In the letter of August 15, 1975, Commissioner Maher wrote:^{25/}

Now that it is my responsibility to carry out the terms of the stipulation, I would first of all like to state my overall position regarding the matter. I fully support the concept that bi-lingual English-Spanish workers are necessary and desirable for the Department to adequately carry out its functions. I have not from my own study determined the appropriate ratio of the bi-lingual workers to the number of recipients requiring a bi-lingual worker,

^{21/} Tr. of April 19, 1976, pp. 26-42.

^{22/} App. 113a

^{23/} Ex. 4, App. 78a. See pp. 6-7, supra.

^{24/} App. 112a

^{25/} App. 72a-75a (emphasis added).

but I do accept the findings regarding the number of additional bi-lingual workers as reflected in the stipulation.

The ten all purpose workers will be added to the staff of the Department of Social Services. I understand that in addition to these ten workers, there were twelve vacancies for bi-lingual workers existing at the time the stipulation was signed and that these too should be filled.

At the time of the July 1974 report on stipulation implementation, my Department reported sixty-two fluent bi-lingual workers. ^{26/} Our current report . . . shows sixty-four bi-lingual workers. Therefore, of the ten additional all-purpose workers to be hired this past year there has been a net gain of two workers. My department will hire these eight and also fill the twelve vacancies for bi-lingual workers existing in July 1974-a total of 20 positions. Since the report of July, 1975, a total of six interpreters have been hired. . . . With these hiring, there are now a total of sixteen positions to be filled to comply with the stipulation.

^{26/} In a letter of June 17, 1976, the Welfare Department confirmed that the parties agreed that 5 of the 62 persons previously counted as all-purpose workers would be counted, instead, as social workers. Thus, at the time of the stipulation, 57 bilingual all-purpose workers and 5 bilingual social workers were on board (App. 45a).

The evidence also showed that on December 31, 1975, in a letter to John Bynoe of HEW, Commissioner Maher wrote that 77 bilingual all-purpose workers had been hired, and that the Department needed to hire 7 more in order to comply with the stipulation.^{27/} Thus, Commissioner Maher understood that the stipulation required that 84 bilingual all-purpose workers be on duty. This figure is consistent with the base figure agreed upon at that time (62),^{28/} plus vacancies existing at the time of the stipulation (12), plus new positions required by the stipulation (10).

After hearing this evidence, the district court stated on a number of occasions that Commissioner Maher's interpretation of the evidence was the same as plaintiffs' and HEW's: the State was required to hire bilingual workers to fill existing vacancies.^{29/} The court ruled from the bench that it was accepting that interpretation as "the law of the case," and ordered the parties to proceed on the issue of the State's compliance with the stipulation.^{30/}

Subsequently, counsel for the State attempted to elicit the testimony of Mr. Samuel Fish, Regional Attorney of HEW. The following exchanges occurred:^{31/}

THE COURT: What can he testify to?

Mr. MacGregor: Mr. Fisher [sic] and myself are probably the only two attorneys -- and he is not a counsel of record, your Honor, he's HEW -- that are familiar with this case from the beginning up till to date, we're the only two attorneys

^{27/} Testimony of Edward Maher, App. 115a.

^{28/} See n. 26, supra.

^{29/} App. 114a -120a.

^{30/} App. 120a.

^{31/} App. 121a - 124a.

that are presently on the case that were involved in the case when the stipulation was ruled.

I wanted to ask him some questions-- and he was present at just about, I would say, every single meeting in which this stipulation was discussed, and he was present in every meeting they had with Mr. Maher, or Mr. Norton, before the stipulation was filed when what was going to go into it was discussed. And maybe we can agree that the questions I ask him he can answer, some of the questions I'm going to ask him is who prepared the stipulation. I think it's important.

MR. KOPLAN: I believe your Honor has ruled.

THE COURT: Yes, I've ruled.

MR. MacGREGOR: Can I ask what the offer of proof is, perhaps, for another forum?

THE COURT: Give me an offer of proof.

MR. MacGREGOR: The first question I was going to ask him was -- I already testified that HEW prepared this stipulation, and I am going to ask him-- and the second thing I was going to ask him--

THE COURT: Why shouldn't the Court believe your testimony?

MR. MacGREGOR: All right. The second thing I was going to ask him, whether he knows whether Health, Education and Welfare had any written communication from Commissioner Norton before the stipulation was filed in which he said he understood that to comply with this stipulation, Connecticut Welfare Department would have to hire ten fluent, all-purpose workers, plus fill all vacancies. The reason I'm asking that, your Honor--

THE COURT: I thought you testified that no one ever mentioned vacancies?

MR. MacGREGOR: That's what I'm going to ask him. Was it ever discussed? It's our claim it never was. As far as I know, it never was, and I will tell you the reason, your Honor.

When codefendant HEW filed their memorandum, they attached a whole bunch of documents. If your Honor bothers to peruse those documents, you'll see that they never raised a question of vacancies until five months and eleven days after the stipulation.

THE COURT: We've been over this.

MR. MacGREGOR: I realize that, your Honor.

. . .

THE COURT: Now, don't ask me any more questions. I've ruled.

MR. MacGREGOR: Your Honor, can I ask --

THE COURT: I don't want to hear anything more on the court's ruling. I'm ordering counsel to stay away from that subject.

MR. MacGREGOR: Well, I just -- one question.

THE COURT: No further questions --

MR. MacGREGOR: All right.

THE COURT: -- on what the Court has already ruled on, Mr. MacGregor.

MR. MacGREGOR: Well, can I -- can I ask --

THE COURT: Mr. MacGregor --

MR. MacGREGOR: I'm not asking on that, your Honor.

THE COURT: You will proceed solely on the basis of whether or not the State of Connecticut has complied with the stipulation, according to my ruling, and not another word on anything else.

MR. MacGREGOR: All right. Your Honor, I'm asking you can I ask Mr. Fisher what his understanding of the base figure was --

The District Court's Order

On September 2, 1976, the district court entered an order interpreting the HEW/Welfare Department stipulation and ordering the Department of Social Services to comply with the stipulation as interpreted. The court held that the evidence showed that all of the parties believed that the stipulation required the Department to hire Spanish-speaking persons to fill the vacancies that existed at the time the stipulation was entered by the court (App. 44a):

The Court having considered both the relevant pleadings, the testimony and the documentary evidence admitted at said hearing finds that the interpretation of the HEW-CWD Stipulation as set forth by HEW, the private plaintiffs, and Commissioner Edward W. Maher (HEW Exhibit 3, Maher letter of August 15, 1975) reflects the intent of the parties at the time said Stipulation was agreed upon.

The court found that the Department of Social Services was required to have in its employ a total of 79 bilingual

all-purpose employees^{32/} and that, at the time of the hearing, 71 such persons were employed.

Therefore, it follows that the Court finds that in order to comply with the terms of the 1974 HEW-CWD Stipulation, the State is required to immediately hire eight (8) all-purpose workers in addition to [the 71] listed on Attachment One.^{33/}

The court ordered the State to hire 8 bilingual all-purpose workers who had been administered fluency tests. Such tests were to be administered within 45 days of the order and the 8 new hires were to be completed within 60 days of the order.

The court also found that the State was required to have in its employ a total of 15 bilingual professional workers, but that, at the time of the hearing, only 5 such persons were employed.^{34/} Therefore, the court ordered that 10 more bilingual professional workers be hired, and that the State submit affidavits to HEW and the private plaintiffs attesting to the qualifications and fluency of each such person hired.^{35/}

^{32/} This figure is derived from a base figure of 57, 12 vacancies, and 10 additional workers. See p. 10 n. 26 and p. 11, supra.

^{33/} App. 48a.

^{34/} Id.

^{35/} App. 49a.

The court ordered that if, at any time, the number of bilingual all-purpose workers fell below 79 or the number of bilingual professional workers fell below 15, those vacancies were to be filled within 60 days.^{36/} Finally, the court ordered the State to submit to HEW a plan for the allocation of bilingual employees among the various state offices.^{37/}

ARGUMENT

Summary

The language of the HEW/Welfare Department stipulation providing that the Department must seek to hire "ten additional all-purpose bilingual English-Spanish workers" is subject to at least two interpretations. The Department could be required either to hire ten persons beyond the number authorized at the time of the stipulation (i.e., fill vacancies and hire ten more persons) or to hire ten persons beyond the number of bilingual employees actually working at that time. Both HEW and the Department offered extrinsic evidence to prove the interpretation the parties intend to give this language, and the district court correctly admitted this evidence.

Heyman v. Commerce and Industry Insurance Co., 524 F.2d 1317 (2d Cir. 1975); Spencer, White & Prentiss Inc. of Connecticut v. Pfizer Inc., 498 F.2d 358 (2d Cir. 1974). The parol evidence

^{36/} App. 49a-50a.

^{37/} App. 50a.

rule posed no bar to the admission of extrinsic evidence to aid in the interpretation of the stipulation. Heyman v. Commerce and Industry Insurance Co., supra; Steamship Corp. v. Refineria Panama, S.A., 513 F.2d 735 (2nd Cir. 1973).

Based on testimony and documentary evidence, the district court found that the parties intended that the Welfare Department would hire ten bilingual all-purpose employees in addition to filling vacancies that existed at the time of the stipulation. This finding is not clearly erroneous and, therefore, should not be set aside on appeal. Rule 52, F.R. Civ. P.

Finally, no reversible error occurred in the exclusion of testimony that would merely have corroborated other evidence and which was offered to prove an uncontested fact.

I. IN DETERMINING WHETHER THE STIPULATION
REQUIRED THE DEPARTMENT OF SOCIAL SERVICES
TO FILL VACANCIES WITH BILINGUAL PERSONNEL,
THE DISTRICT COURT CORRECTLY ADMITTED
EVIDENCE SHOWING THE INTENT OF THE PARTIES

The Department of Social Services states that "the narrow issue in the appeal initially concerns the question of whether or not it was error for the Judge to consider anything outside the Stipulation in determining the intent of the parties as of June 10, 1974" (Brief of Appellants, p. 12). The stipulation provides that the Department must hire "ten additional" bilingual all-purpose workers and "ten additional" bilingual social workers.^{38/} The Department contended, both in the district court and on appeal, that "ten additional" employees refers to employees above the number actually on board at the time of the stipulation. HEW and the private plaintiffs argued that all of the parties--including the Department--understood and intended that the Department was required to hire bilingual persons to fill vacancies that existed at the time the court entered the stipulation and hire "ten additional" bilingual workers in each category.

The HEW/Welfare Department stipulation, as any other order entered by a court by the consent of the parties,^{39/}

^{38/} App. 36a.

^{39/} Appellants do not contend that the stipulation was unenforceable. Indeed, the court had "not only the power but the duty to enforce a settlement agreement which it had approved." Meetings & Expositions, Inc. Tandy Corporation, 490 F.2d 714, 717 (2d Cir. 1974).

should "be construed for enforcement purposes basically as a contract, [and] reliance upon certain aids of construction is proper, as with any contract." United States v. ITT Continental Baking Co., 420 U.S. 223, 238 (1975). On appeal, the Department of Social Services argues that the stipulation is unambiguous; by failing explicitly to discuss vacancies in the stipulation, the parties intended that vacancies not be filled with bilingual employees.

Because the language "ten additional" employees is susceptible to at least two constructions -- that of the plaintiffs and HEW and that offered by the Department of Social Services -- an ambiguity exists which the district court was required to resolve. Union Insurance Society of Canton, Ltd. v. William Gluckin & Co., 353 F.2d 946, 951 (2d Cir. 1965).

Contrary to appellants' assertions, no party to the proceedings below attempted to contradict the express language of the stipulation or to construe the stipulation in a way that was inconsistent with the express language. Rather, by introducing extrinsic evidence, the parties attempted to aid the court in interpreting that language. The Department of Social Services, itself, engaged in this exercise by introducing the testimony of Mr. MacGregor, the attorney for the

Department, concerning the circumstances surrounding the adoption of the stipulation. Nor did Mr. MacGregor object to the admission of correspondence between the Department and HEW officials.^{40/}

The admission of the HEW/Welfare Department correspondence was consistent with the rule that "the practical interpretation of a contract by the parties to it for any considerable period of time before it comes to be the subject of controversy is deemed of great, if not controlling, influence." Old Colony Trust Co. v. Omaha, 230 U.S. 100, 118 (1913). The correspondence was admitted for the purpose of proving HEW's and Commissioner Maher's interpretation of the stipulation.

Where an ambiguity exists in a contract term, the court must consider extrinsic evidence to determine the construction the parties intended to give that term. Heyman v. Commerce and Industry Insurance Co., 524 F.2d 1317, 1320 (2nd Cir. 1975); Spencer, White & Prentiss Inc. of Connecticut v. Pfizer Inc., 498 F.2d 358, 363 (2d Cir. 1974); Asheville Mica Co. v. Commodity Credit Corp., 335 F.2d 768, 770 (2d Cir. 1964); Atlantic Lines, Ltd. v. Narwhal, Ltd., 514 F.2d 726, 730 (5th Cir. 1975); H.K. Porter Co. v. Wire Rope Corp. of America, Inc., 367 F.2d 653, 660-661 (8th Cir. 1966). Although the parol evidence rule bars the admission of extrinsic evidence to vary or contradict the express terms of a contract, it is no bar to the admission of evidence which merely aids in the interpretation of

^{40/} App. 112a.

contract terms. Heyman v. Commerce and Industry Insurance Co.,
supra, 524 F.2d at 1320 n.2; Battery Steamship Corp. v.
Refineria Panama, S.A., 513 F.2d 735, 739 (2d Cir. 1975);
Lucie v. Kleen-Leen, Inc., 499 F.2d 220, 221 (7th Cir. 1974)
(per curiam).

Thus, the district court correctly admitted evidence showing the construction the parties intended to give the requirement that the Department of Social Services hire "additional" bilingual employees.

II. THE DISTRICT COURT CORRECTLY HELD THAT
ALL OF THE PARTIES INTENDED THAT THE
DEPARTMENT OF SOCIAL SERVICES WOULD HIRE
BILINGUAL EMPLOYEES TO FILL VACANCIES THAT
EXISTED AT THE TIME OF THE STIPULATION

The evidence before the district court concerning the intent of the parties was as follows: Francis MacGregor's testimony^{41/} that the parties did not discuss the issue of filling vacancies; Commissioner Norton's letter of March 29, 1974 to John Bynoe of HEW containing the language which was later embodied in the stipulation;^{42/} Commissioner Maher's letter to John Bynoe of August 15, 1975 (post-stipulation), stating that he intended to comply fully with the stipulation and that he understood that in order to do so, he must fill vacancies for bilingual employees as well as hire additional bilingual persons;^{43/} and testimony

^{41/} App. 113a.

^{42/} HEW Ex. 4, App. 78a. The Department of Social Services contends (Brief p. 21) that ambiguities in a contract should be construed against the party that prepared the document. Although HEW actually drew up the stipulation, the language was taken directly from Commissioner Norton's letter.

^{43/} HEW Ex. 3, App. 72a-75a.

that on December 31, 1975, Commissioner Maher again wrote to John Bynoe and stated that a total of 84 bilingual all-purpose workers was required by the stipulation and that, as of that date, the Department needed 7 more such persons in order to be in full compliance.^{44/}

Based on this evidence, the district court found that the parties, including Commissioner Maher,^{45/} interpreted the stipulation as requiring the Department of Social Services to hire bilingual persons to fill existing vacancies, and that this interpretation reflected the intent of the parties at the time the stipulation was signed. This finding may not be set aside unless clearly erroneous. Rule 52, F.R. Civ. P. The district court's finding is amply supported both by the evidence and common sense. Both HEW and the private plaintiffs had argued that the Welfare Department needed additional bilingual employees in order to meet the requirements of Title VI. It is unlikely that either of these parties would have agreed to a stipulation whereby the Welfare Department agreed to forego twelve slots

^{44/} Testimony of Commissioner Maher, App. 115a. As noted earlier, the figure 84 is derived from the base figure (62), plus vacancies existing as of June 1974 (12), plus new positions (10).

^{45/} Commissioner Maher testified that even after he wrote to HEW in August and December 1975 stating his understanding that he was required to fill vacancies, counsel for the State did not call his attention to any alleged misunderstanding of his obligations. Finally, two days prior to the hearing of April 19, 1976 -- almost two years after the entry of the stipulation -- counsel for the State discussed the matter with Commissioner Maher (App. 117a-118a).

for bilingual all-purpose workers that were vacant at that time in exchange for ten new positions -- a net decrease of two bilingual workers. The evidence shows that none of the parties intended this result.

III. THE DISTRICT COURT DID NOT ERR
IN EXCLUDING THE TESTIMONY OF
HEW OFFICIAL SAMUEL FISH.

After the court had ruled that the parties intended that the Department of Social Services hire bilingual employees to fill vacancies, counsel for the Department attempted to call HEW Regional Attorney Samuel Fish as a witness to testify that, prior to the entry of the stipulation, the parties had not discussed vacancies.^{46/} Counsel for the Department had already testified that there had been no such discussion,^{47/} and that fact was not in dispute.

"[U]pon review of a trial court's ruling relative to the admission or exclusion of offered evidence, the issue before the appellate court is ordinarily whether the ruling was so prejudicially erroneous as to require that the cause be remanded for a new trial." Severi v. Seneca Coal & Iron Corp., 381 F.2d 482, 489 n.7 (2d Cir. 1967). "No error in . . . the exclusion of

^{46/} See pp. 11-14, supra.

^{47/} See p. 9, supra.

evidence . . . is ground for granting a new trial . . . unless refusal to take such action appears to the court inconsistent with substantial justice." Rule 61, F.R. Civ. P. Since Mr. Fish's testimony would merely have corroborated Mr. MacGregor's testimony and was offered to prove an uncontested fact, appellants were not prejudiced by the court's exclusion of Mr. Fish's testimony. Savard v. Marine Contracting Inc. 471 F.2d 536, 543 (2d Cir. 1972); Vitarelle v. Long Island R.R. Co., 415 F.2d 302, 304 (2d Cir. 1969) (per curiam).

CONCLUSION

For the foregoing reasons, the order of the district court should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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